STATE OF MICHIGAN

COURT OF APPEALS

LAWRENCE HANNER,

Petitioner-Appellant,

v

CITY OF DEARBORN HEIGHTS,

Respondent-Appellee.

UNPUBLISHED
September 18, 2008

No. 277957
Tax Tribunal
LC No. 00-314317

Before: Wilder, P.J., and Markey and Talbot, JJ.

PER CURIAM.

Petitioner appeals as of right from the Michigan Tax Tribunal's (MTT) judgment rejecting his challenges to respondent, the city of Dearborn Heights's (the City), assessment of property taxes against his principal residence and an adjoining lot. We affirm.

Petitioner first contends that the MTT erroneously determined that it lacked jurisdiction to review his claim that the City violated MCL 211.25 by combining his adjoining parcels of property for purposes of taxation without providing the required notice and obtaining petitioner's permission. We agree. We review de novo the MTT's determination that it lacks subject matter jurisdiction over an issue. *Trostel, Ltd v Dep't of Treasury*, 269 Mich App 433, 440; 713 NW2d 279 (2006).

Pursuant to the tax tribunal act, MCL 205.701 *et seq.*, the MTT has "exclusive and original jurisdiction" over the following relevant types of cases:

> (a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state.
>
> (b) A proceeding for a refund or redetermination of a tax levied under the property tax laws of this state. [MCL 205.731.]

Pursuant to MCL 205.732, the MTT is granted the following, nonexhaustive list of powers:

(a) Affirming, reversing, modifying, or remanding a final decision, finding, ruling, determination, or order of an agency.

(b) Ordering the payment or refund of taxes in a matter over which it may acquire jurisdiction.

(c) Granting other relief or issuing writs, orders, or directives that it deems necessary or appropriate in the process of disposition of a matter over which it may acquire jurisdiction.

The act more specifically provides for the jurisdiction of the small claims division (SCD), in relevant part, as follows:

(1) The residential property and [SCD] created in section 61 has jurisdiction over a proceeding, otherwise cognizable by the tribunal, in which residential property is exclusively involved. Property other than residential property may be included in a proceeding before the residential property and [SCD] if the amount of that property's taxable value or state equalized valuation in dispute is not more than $100,000.00 . . . .

(2) A person or legal entity entitled to proceed under section 31, and whose proceeding meets the jurisdictional requirements of subsection (1), may elect to proceed before either the residential property and [SCD] or the entire tribunal. [MCL 205.762.]

The MTT incorrectly determined that it lacked jurisdiction to determine whether the City improperly combined petitioner's parcels of land under MCL 211.25(1)(e). The properties were combined solely for the purpose of assessing and valuing the property to impose property taxes. Accordingly, the issue falls within the scope of MCL 205.731(a). If the MTT found that the City improperly combined the parcels, it could modify the City's assessment and valuation by separating the parcels and assessing and valuing each on its own. Accordingly, the MTT had the express power to remedy a potential error pursuant to MCL 205.732(a). See, e.g., *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620; 462 NW2d 325 (1990). Moreover, the case exclusively involves real property and, therefore, the SCD had jurisdiction to consider the issue. MCL 205.762(1).

Furthermore, although it is well established that the MTT lacks jurisdiction to find a statute invalid or unconstitutional,[1] nothing prevents the MTT from determining that a government entity violated a statute when assessing and valuing property for tax purposes. The MTT has the power to enter a writ, order, or directive indicating that the City violated MCL 211.25(1)(e) in combining the parcels. MCL 205.732(c). If the City fails to abide by the MTT's

[1] *Wikman v Novi*, 413 Mich 617, 647; 322 NW2d 103 (1982); *WPW Acquisition Co v Troy*, 254 Mich App 6, 8; 656 NW2d 881 (2002); *Meadowbrook Village Assocs v Auburn Hills*, 226 Mich App 594, 596-597; 574 NW2d 924 (1997).

judgment and remedy the situation, petitioner could file suit in circuit court seeking equitable relief to enforce the MTT's writ, order, or directive. *Wikman v Novi*, 413 Mich 617, 648; 322 NW2d 103 (1982). Accordingly, the MTT should have considered petitioner's claim on this ground.

We agree with petitioner's assertion that the City violated MCL 211.25(1)(e). However, we find that this violation did not result in an improper description, valuation, or prejudicial assessment of petitioner's property. Pursuant to Const 1963, art 6, § 28, "In the absence of fraud, error of law or the adoption of wrong principles," a party may not appeal the MTT's final decision regarding the valuation of property for tax purposes. Our Supreme Court addressed "the proper standard, under Michigan law, for reviewing an agency's construction of a statute," in *SBC Michigan v Public Service Comm (In re Complaint of Rovas Against SBC Michigan)*, ___ Mich. ___; 754 NW2d 259 (Docket Nos. 134493, 134500, filed 7/23/08), slip op at 13. The Court indicated that the proper standard of review for agency statutory construction is found in *Boyer-Campbell v Fry*, 271 Mich 282; 260 NW 165 (1935). "The *Boyer-Campbell* Court held that

> the construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons. However, these are not binding on the courts, and [w]hile not controlling, the practical construction given to doubtful or obscure laws in their administration by public officers and departments with a duty to perform under them is taken note of by the courts as an aiding element to be given weight in construing such laws and is sometimes deferred to when not in conflict with the indicated spirit and purpose of the legislature. [*Boyer-Campbell, supra* at 296-297 (internal citations and quotation marks omitted).]

This standard requires "respectful consideration" and "cogent reasons" for overruling an agency's interpretation. Furthermore, when the law is "doubtful or obscure," the agency's interpretation is an aid for discerning the Legislature's intent. However, the agency's interpretation is not binding on the courts, and it cannot conflict with the Legislature's intent as expressed in the language of the statute at issue.

Boyer-Campbell remains good law [*SBC Michigan, supra*, slip op at 13-14.]

MCL 205.737 provides for the valuation and assessment of real property for purposes of taxation, in relevant part, as follows:

> (1) The tribunal shall determine a property's taxable value pursuant to section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.
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> (2) The tribunal shall determine a property's state equalized valuation by multiplying its finding of true cash value by a percentage equal to the ratio of the average level of assessment in relation to true cash values in the assessment district, and equalizing that product by application of the equalization factor that is uniformly applicable in the assessment district for the year in question. The property's state equalized valuation shall not exceed 50% of the true cash value of the property on the assessment date.

> (3) The petitioner has the burden of proof in establishing the true cash value of the property. The assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.

The goal "is to determine the most accurate valuation under the individual circumstances of the case." However, the MTT need not consider "every possible factor affecting value." *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 398-399; 576 NW2d 667 (1998). When determining the "true cash value" of a property, the MTT considers its "highest and best use." According to this theory:

> [T]he use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay. Land is appropriately valued "as if available for development to its highest and best use, that most likely legal use which will yield the highest present worth." [*Edward Rose*, *supra* at 633; see also *Great Lakes*, *supra* at 408.]

"As a general rule, different parcels of land in the same ownership are to be regarded as separate units for tax purposes and, as such, must be separately valued and assessed." *Edward Rose*, *supra* at 632, citing 72 Am Jur 2d, State and Local Taxation, § 743, p 72. However, MCL 211.25 provides for the combination of parcels as follows:

> (1) The description of real property may be as follows:
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> * * *
>
> (e) When 2 or more parcels of land adjoin and belong to the same owner or owners, they may be assessed by 1 valuation if permission is obtained from the owner or owners. The assessing authority shall send a notice of intent to assess the parcels by 1 valuation to the owner or owners. Permission shall be considered obtained if there is no negative response within 30 days following the notice of intent.

First, we note that there is absolutely no record evidence that the City ever took these steps and the City has avoided the issue. Petitioner was not made aware that his parcels had been combined until he received a tax bill. That bill could not be a "notice of intent" because the City had already carried out its intended action and combined the parcels without petitioner's knowledge. Based on the evidence (or the negative inference from the lack of evidence), the hearing referee properly determined that it was uncertain whether the City had provided the proper notice to petitioner.

Accordingly, we agree with petitioner that the City (and the MTT) should have described, valued, and assessed the two parcels of property separately. As noted in *Plymouth United Savings Bank v Plymouth*, 289 Mich 307, 313-314; 286 NW 625 (1939), however, nonprejudicial errors in the description of property on the tax rolls do not necessarily invalidate the taxes imposed.

We find that the City properly assessed and valued the 60 by 120-foot lot on which petitioner's home was built. Further, we agree with the City and MTT's choice of valuation methods, i.e., the market or comparable sales approach.

> The sales-comparison or market approach has been described as requiring an analysis of recent sales of similar properties, a comparison of the sales with the subject property, and adjustments to the sale prices of the comparable properties to reflect differences between the properties. It has been described as the only approach that directly reflects the balance of supply and demand for property in marketplace trading. [*Great Lakes, supra* at 391 (internal citations omitted).]

In relation to the market approach, the Supreme Court has adopted the following reasoning:

> "'The market value of a given property is estimated by comparison with similar properties which have recently been sold or offered for sale in the open market. The principle of substitution is applied, i.e., when property is replaceable, typical buyers will not purchase it at a higher price than those paid for similar properties with comparable locations, characteristics, and future earning capabilities. Of all appraisal methods the market data approach is the most direct, the best understood, and the only one directly reflecting the balance of supply and demand for a whole property in actual market place trading.'" [*Edward Rose, supra* at 636-637, quoting *Antisdale v City of Galesburg*, 420 Mich 265, 276 n 1; 362 NW2d 632 (1984), quoting 1 Michigan State Tax Comm, Assessor's Manual, ch VI, pp 1-2.]

Importantly, the market or cash value of the property must be determined by looking at the property's potential selling price at the time of the assessment. *Helin v Grosse Pointe Twp*, 329 Mich 396, 403; 45 NW2d 338 (1951).

Along with his brief in the MTT, petitioner included a hand-written spreadsheet describing the sales of "comparable" properties. That document does not include the addresses of the homes, the dates on which the homes were sold, or the size of the lots. Accordingly, it is useless for purposes of the market approach. The City, on the other hand, provided evidence of four "comparable" properties. Based on those comparables, petitioner's home had a market or true cash value of $255,023 and an assessed value of $127,511. However, the City reduced the assessed value to $109,600 in 2005, and $110,000 in 2006.

The MTT determined that the market or true cash value of petitioner's home was $219,200, the state equalized value was $109,600, and the taxable value was $77,898. The MTT assigned a taxable value to the combined parcels that could have been assigned solely to the 120 by 60 foot parcel. The taxable value was reached using "comparable" properties that did not include an additional 20 feet of frontage. Yet, the City did not increase the taxable value of petitioner's property in comparison. Accordingly, petitioner cannot establish that he was prejudiced or harmed by the improper combination, description, or assessment of his property. Therefore, we find that the taxes actually imposed by the City and upheld by the MTT are not invalid, *Plymouth United Savings Bank, supra* at 313-314, and we need not remand for the separation of the parcels. See *Mulholland v DEC Int'l Corp*, 432 Mich 395, 411 n 10; 443

NW2d 340 (1989) (finding that this Court may affirm a lower court's decision when it reached the right result, albeit for the wrong reason).

We also note that petitioner incorrectly asserts that the half-size vacant lot adjoining his primary property has no value. First, petitioner paid valuable consideration for the land ($4,500). Second, the increased yard size certainly increases the value of the home to petitioner and for resale purposes. Petitioner complains that he cannot use the land to extend his home because he already has a garage on the opposite side of the property. However, petitioner could potentially extend the living space of his home onto the adjoining lot, he could install a pool, or build a deck. Third, petitioner could sell the land to his neighbor to the south. See *Grand Rapids v Widdicomb*, 92 Mich 92, 95; 52 NW 635 (1892) (reasoning that a 13-foot-wide strip of land only had value to abutting land owners).

We also disagree with petitioner's assertion that the City's valuation and assessment of his property amounted to fraud.

> "A valuation is necessarily fraudulent where it is so unreasonable that the assessor must have known that it was wrong. If the valuation is purposely made too high through prejudice or a reckless disregard of duty in opposition to what must necessarily be the judgment of all competent persons, or through the adoption of a rule which is designed to operate unequally upon a class and to violate the constitutional rule of uniformity, the case is a plain one for the equitable remedy by injunction."
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> Intentional overassessment is fraud. In the eyes of the law an assessment at variance with undisputed facts is a fraud upon the rights of the taxpayer.
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> The use of a method of valuation which does not determine true cash values is fraud in law. [*Helin, supra* at 406-407 (internal citations omitted).]

As noted, *supra*, the City's assessment and valuation of petitioner's property was consistent with the results reached under the market approach. There is no evidence that the City assessed petitioner's property too high by combining the lots when the City could have imposed the same taxes on the primary property standing alone. Accordingly, petitioner's claims of fraud must fail.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Jane E. Markey
/s/ Michael J. Talbot